IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.3145/1995
(Superintending Geologist Vs. State of Raj. & Ors.)

Date of order : 25.10.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.N. Tiwari, Dy. Govt. Advocate.
Mr. Harish Purohit, for the respondent-workman.

Heard learned Dy. Govt. Advocate as well as learned counsel appearing on behalf of respondent-workman.

By way of filing the present writ petition, the Mines & Geology Department is challenging ex-parte award dated 8.7.1993 passed by Judge, Labour Court, Udaipur as well as the order dated 2.5.1994.

Vide impugned ex-parte award dated 8.7.1993, the Judge, Labour Court has observed that petitioner had worked for more than 240 days in the petitioner-department, therefore, for valid retrenchment of his services, the provisions of Sections 25-F (a) and (b) of the Industrial Disputes Act were to be complied with but without holding any enquiry and without giving any notice to the workman, the service of the

workman was terminated and therefore, the Judge, Labour Court, Udaipur set aside the termination of the workman in pursuance of the reference made by the appropriate Government under Section 10 of the Industrial Disputes Act.

Learned Dy. Govt. Advocate for the State vehemently argued that against ex-parte award passed by Judge, Labour Court, Udaipur, an application was filed for setting aside the ex-parte award by the petitioner-department in which the reasons for non-appearance were brought to the notice of the Judge, Labour Court but the Judge, Labour Court without considering the ground in right perspective rejected the application vide impugned order dated 2.5.1994. Learned Dy. Govt. Advocate contended that though notices issued by the Judge, Labour Court, Udaipur were served upon the department but due to busy government work, nobody appeared before the Judge, Labour Court on 29.9.92, 27.1.93, 3.5.93, 19.6.93 and 8.7.93, therefore, the application filed by the department for setting aside the ex-parte awarded was to be allowed but erroneously the Judge, Labour Court has dismissed the said application, which is totally illegal, therefore, the order impugned dated 2.5.1994 and award dated 8.7.1993 may be set aside and the matter may be remitted to Judge, Labour Court, Udaipur for deciding the case afresh after providing opportunity to the Department to file reply.

Learned counsel for the workman-respondent vehemently argued that workman is in service after award because no order has been passed by this Hon'ble Court for staying the operation of the award only order was made for staying the back wages. It is further contended by the learned counsel for the workman-respondent that no useful purpose would be served in setting aside the award and sending the case back to the Judge, Labour Court because it is nowhere disputed by the petitioner that the workman has not completed 240 days. It is also submitted that workman-respondent is in service in pursuance of award and he is settled with life and he is ready to forego the back-wages from the date of termination to the date of award. It is further contended that reasons for non-appearance before the Judge, Labour Court are not tenable. Therefore, this writ petition may be dismissed.

I have perused the entire record of the case. It is true that normally if sufficient reasons are given for non-appearance, then, subordinate courts are required to consider the reasons sympathetically while taking into account the reasons mentioned in the application. It is obvious from the record of this case that for near about five occasions though notices were served upon the Department but nobody appeared before the Judge, Labour Court for contesting the

claim. According to law, in the event of non-appearance of Department, there was no option for the Judge, Labour Court, Udipur but to decide the matter on merit and it has been done by Judge, Labour Court, Udaipur.

In this petition, the petitioner-department is not disputing the fact that the workman-respondent has not completed 240 days, therefore, while passing ex-parte award for reinstatement on the ground of non-compliance of provisions of Section 25-F (a) and (b), no illegality has been committed by the Judge, Labour Court. However, in my opinion, the back wages awarded by Judge, Labour Court from the date of termination till the date of passing of award is required to be quashed because the petitioner is also ready to forego the back wages for the said period. I am also of the opinion that no useful purpose will be served to remit the case to the Judge, Labour Court after lapse of near about 13 years, more so, on the ground that this Court has refused to stay the operation of reinstatement and only back wages were stayed by this Court.

Thus, looking to the totality of the circumstances, the ex-parte award dated 8.7.1993 passed by Judge, Labour Court, Udaipur is upheld to the extent of reinstatement but the order with regard to back-wages from the date of retrenchment till the

date of passing of award is set aside.

The writ petition is disposed of accordingly.

(GOPAL KRISHAN VYAS), J.

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